

(1931) 08 PAT CK 0010

In the Patna High Court

Rambeas Tewari and Others

APPELLANT

Vs

Akhauri Raj Mohan Sahay and Others

RESPONDENT

Date of Decision : 06-08-1931

Acts Referred:

Bengal Tenancy Act, 1885 — Section 148

Citation : AIR 1932 Patna 304

Hon'ble Judges : Scroope, J;Kulwant Sahay, J

Bench : Full Bench

Judgement

Kulwant Sahay, J.—This is an appeal by the tenants defendants and it arises out of a suit for recovery of bhaoli rent. It appears that the suit was originally brought by plaintiff 1, Akhauri Raj Mohan Sahay alone. He was interested in eight annas share of the rent claimed and the other eight annas belonged to plaintiffs 2, 3 and 4 who were originally defendants 6, 7 and 8 in the suit. They were described as the proforma defendants and it was stated in the body of the plaint that the collection of rent of the plaintiffs and the proforma defendants was joint, but that on account of certain ill-feelings which had recently arisen between them the proforma defendants refused to join the plaintiff in bringing the suit and that the plaintiff was not aware as to whether the proforma defendants had realized their share of the rent or not. Plaintiff 1 therefore asked for his own eight annas share of the rent, but he added that if the pro forma defendants had not realized their rent, then it would be open to them to become plaintiffs on payment of the court-fee. In para 8 of the plaint it was stated that if on account of nonpayment of court-fee on 16 annas rent, the Court feels difficulty in proceeding with the suit, then it may take the full court-fee and pass a decree for entire 16 annas rent against the defendants. The schedule attached to the plaint gave the particulars required by Section 148, Ben Ten Act. In that schedule a number of plots were entered as the plots forming the holding of the tenants defendants.

2. In the written statement filed by the tenants defendants it was contended that

one of the plots, namely, survey plot No. 910 which formed a part of the holding had been omitted and that therefore the suit could not proceed. There were other allegations as regards payment and limitation with which we are not concerned here. On 22nd November 1928 the pro forma defendants 6, 7 and 8, namely, the owners of the other eight annas share in the property applied for their being transferred from the category of defendants to that of plaintiffs and the learned Munsif by his order of that date made an order transferring them to the category of plaintiffs. Upon this being done these newly transferred plaintiffs filed an account of the sum due to them and paid the court fee. The question then raised was that so far as they were concerned a part of the claim was barred. Both the Courts below have decreed the claim of the plaintiffs.

3. In this appeal the first question raised is that having regard to the fact that one of the plots comprised in the holding was left out of the schedule attached to the plaint, therefore the suit was not maintainable at all. It appears that as regards plot No. 910 there was a dispute between the parties and the plaintiff had instituted a suit claiming possession of plot No. 910 on the ground that it was a part of his zirat laud. An appeal in that suit was pending in the High Court at the time the present suit was instituted. Plot No. 910 was therefore not included in the schedule attached to the plaint. The result therefore is that the suit was instituted in respect of a part of the holding and not in respect of the whole holding. The consequence of such 1932 P/39 & 40 a suit would be to treat it not as a rent suit but as an ordinary money suit and that the decree that may be passed in a suit of this nature will only be treated as a money decree and not as a rent decree. The effect of not including plot No. 910 would not be to make the suit not maintainable at all.

4. The second point raised in this appeal is that the suit was barred as regards the share of the pro forma defendants who had been transferred to the category of plaintiffs in respect of two of the years in suit, namely, the years 1931 and 1933 Fasli. Now this point is met by the provisions of Section 22, Sub-section (2), Lim. Act. This section especially provides that where a plaintiff is made a defendant or a defendant is made a plaintiff, the bar of limitation will not arise.

5. It is however, contended that Sub-section (2), Section 22, Lim. Act, does not refer to cases where by the transfer of a defendant to the category of plaintiff the claim is enhanced. In my opinion there is no authority for this contention. In order to put that interpretation upon Sub-section (2), Section 22, it will be necessary to read into the Sub-section words which do not occur there. Sub-section (2) was especially added with the object of saving the bar of limitation when a defendant is transferred to the category of plaintiff. Sub-section (2) was introduced into the Act by the amending Act 9 of 1908 and even before that amendment it had been held that the effect of transferring a defendant to the category of plaintiff was not the same as adding a new plaintiff within the meaning of Sub-section (1), Section 22. I am therefore of opinion that the plea of limitation has no substance.

6. The third point taken was the plea of payment. It appears that this question was raised in the trial Court but it was not raised in the Court of appeal below. The learned District Judge on appeal sets out the points urged before him and the question as regards payment is not one of the points urged before him. Moreover, the question as regards payment is a question of fact and it does not involve any question of law.

7. The last point raised is that the Courts below having discarded the appraisement papers of the plaintiffs ought not to have relied upon those papers for the purpose of finding the kind of crops produced on the land. The learned District Judge himself explains what he meant by saying that the appraisement papers, could not be relied upon. He says that those papers cannot be relied upon for the purpose of finding the quantity of crops but as regards the kind of crops he relies upon those papers, There is nothing wrong in his relying upon those papers for the purpose of finding the kinds of crops on the land and in not relying on them for any other purpose

8. There is therefore no substance in this appeal and it must be dismissed with costs.

Scroope, J.

9. I agree.